

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 1-30, 36-42 and 51-55 were examined. Claims 1, 2, 5-30, 36-42, 51, 54 and 55 were rejected. Claims 3, 4 and 19-30 were indicated to be allowable. Claims 31-35, 43-50 and 56 were withdrawn from consideration in response to an election/restriction of claims.

By this Amendment, claims 2, 3, 15, 16, 31-35, 43-50 and 56 have been cancelled without prejudice to renewal and claims 1, 5, 6, 14, 17, 18, 52 and 53 have been amended. Claim 1 has been amended to include the limitations of original claims 2, 3 and 4, and, based on the Examiner's indication of allowability, is therefore allowable. Claims 5, 6, 14, 17 and 18 have been amended to depend from amended claim 1. Claims 52 and 53 have been amended to address the objection under 37 C.F.R. 1.75(c). Support for the claim amendments is found in the original claims and throughout the specification and the drawings. Accordingly, no new matter is added by these amendments.

Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Claims 1, 4-15, 17-30, 36-42 and 51-55 are pending after entry of the amendments set forth herein.

Applicants respectfully request entry of the amendments herein and reconsideration of the application in view of the amendments and remarks made herein.

Double Patenting Rejections

Claims 1, 2, 7-20, 36-42 and 51-54 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 9-39, 48 and 50-54 of U.S. Patent Application Serial No. 09/879,188 (Applicant's Docket No. LIFE-019). Applicant respectfully submits that the claims of the cited patent application and of the subject application as currently amended are patentably distinct as the respective claimed devices are structurally distinct from each other. The '188 claims do not cover a device having a hydrophilic porous material having a distal portion associated with at least one piercing member and a proximal portion adjacent at least one porous electrode, wherein the proximal portion is more porous than the distal portion. As such the claims of the subject application are not

obvious in view of those of U.S. Patent Application Serial No. 09/879,188. Accordingly, Applicant's respectfully request withdrawal of this rejection.

Information Disclosure Statement

Applicant's apologize for the typographical error in citing to Applicant's copending application. The reference to Serial No. 08/879,198 should have been Serial No. 09/879,188, which corresponds to Applicant's Docket No. LIFE-019 (discussed above).

Claim Objections

Claim 52 was objected to under 37 C.F.R. 1.75(c) as being in improper form as depending from two claims simultaneously. Claim 52 has been amend to reference only claim 36. Withdrawal of the objection is respectfully requested.

Rejections Under 35 U.S.C. §103

Claims 1, 5, 7-13, 15-18 and 55 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 9/64580 in view of Mullen (U.S. Patent No. 5,231,028). Claims 2, 6 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 9/64580 in view of Yukawa et al. (U.S. Patent No. 6,059,946). Claims 36-42, 51 and 54 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 9/64580 and Mullen as applied to claim 1 and further in view of Zelin et al. (U.S. Patent No. 5,821,399).

As claim 1 has been amended to include the limitations of allowable claims 3 and 4, this rejection has been obviated with respect to it and all of its currently pending dependent claims 4-14, 17 and 18, as well as claims 54 and 55 which are directed to a kit comprising a plurality of devices according to claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection and allowance of the claims.

Conclusion

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-018.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP

Date: 1/6/04

By: Carol M. LaSalle
Carol M. LaSalle
Registration No. 39,740

BOZICEVIC, FIELD & FRANCIS LLP
200 Middlefield Road, Suite 200
Menlo Park, CA 94025
Telephone: (650) 327-3400
Facsimile: (650) 327-3231

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